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Supreme Court, U.S.
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No. 91-1237

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1991

ROBERT L. HAMILTON,

Petitioner,

v.

AIR JAMAICA, LTD.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OUESTIONS PRESENTED

1. Whether the Employee Retirement Income Security Act of 1974 regulates the substantive content of an employee welfare benefit plan?

2. Whether the Employee Retirement Income Security Act of 1974 requires vesting of employee welfare benefits?

RULE 28.1 LIST

Respondent Air Jamaica Ltd. has no parent companies, subsidiaries or affiliates to list pursuant to Rule 28.1.

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The respondent, Air Jamaica, Ltd. respectfully requests that this Court deny the petition for writ of certiorari seeking review of the Third Circuit's opinion in this case. That opinion is reported at 945 F.2d 74, 1991.

STATUTES INVOLVED

ERISA §201(1), 29 U.S.C. §1051(1)

This part shall apply to any employee benefit plan described in section 4(a) (and not exempted under Section 4(b)) other than –

(1) an employee welfare benefit plan;

ERISA §502(a)(1)(B), 29 U.S.C. §1132(a)(1)(B)

(a) A civil action may be brought –

(1) by a participant or beneficiary

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.

STATEMENT OF THE CASE

Petitioner, Robert L. Hamilton ("Hamilton") brought this action against his former employer, Respondent Air Jamaica, Ltd. ("Air Jamaica") to obtain, *inter alia*, severance pay in addition to that provided by Air Jamaica on the termination of his employment. The District Court, deciding the case under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1002 *et seq.,* ruled in Hamilton's favor on that issue. On Air Jamaica's appeal, the Third Circuit Court of Appeals determined that ERISA did not require the additional pay sought by Hamilton and reversed the judgment of the District Court. Hamilton has asked this Court to review the decision of the Third Circuit Court of Appeals on writ of certiorari.

Air Jamaica is an international air carrier owned by the Government of Jamaica. Air Jamaica hired Hamilton on August 30, 1976 and terminated his employment on May 31, 1989 as part of a corporate reorganization and reduction in the workforce (Petition at 14-15a).

As found by the District Court, the relevant facts are that Hamilton received his copy of Air Jamaica's Employee Handbook in early March, 1989 (Id.). Unknown

to Air Jamaica at the time of its distribution, the Handbook contained an error in the "Separation Procedure" section of the "Policies and Procedures" chapter. The consultant who prepared the Handbook for Air Jamaica inserted an incorrect formula for severance pay computation, and Air Jamaica did not discover the error during the editing process (Petition at 15-16a).

The erroneous formula provided that employees, such as Hamilton, terminated due to job elimination or reorganization, would receive four weeks' severance pay for each year of employment. There was no stated cap upon the amount of severance pay an employee could receive (Id.). Air Jamaica's actual policy and practice was to provide two weeks severance pay per year of employment to a maximum of three months' pay (Id.). Air Jamaica had consistently applied that policy during its corporate existence, both before and after Hamilton's termination (Id.; see also Petition at 3a).

Despite the error in the description of the separation pay formula, the Handbook did accurately set forth Air Jamaica's reservation of its right to apply and alter its practices, policies and benefits as it, in its sole discretion, saw fit. The "Introduction" to the Handbook's "Policy and Procedures" chapter provided:

> "Although it is our present intention to continue these pay practices, employment policies and benefits, we reserve the right, whether in an individual case or more generally, to alter, reduce or eliminate any pay practice, policy or benefit, in whole or in part, without notice. Moreover, personnel actions taken or decisions made will not necessarily be reversed or modified if these policies or procedures are not followed."

(Petition at 2-3a, 17-18a).

Employees receiving the Handbook were asked to sign a "Statement of Understanding" that they had read the "Policies and Procedures" chapter and understood that Air Jamaica reserved those rights (Petition at 18a,

30a). Hamilton read the reservation clause and the Statement of Understanding. He refused to sign the Statement of Understanding because he did not wish to give the appearance of consenting to Air Jamaica's reservation of authority (Petition at 18a).

In late May, 1989, Air Jamaica noticed the error in the Handbook's representation of the severance pay formula. By memorandum dated May 30, 1989, Air Jamaica notified all affected employees of the error in the Handbook and advised employees that the Handbook should state that employees terminated due to job elimination or reorganization would "receive a terminal gratuity based on two weeks' basic pay per year for each full year worked up to a maximum of three months' pay" (Petition at 17a).

On May 25, 1989, Air Jamaica notified Hamilton that his employment would terminate on May 31. Air Jamaica provided Hamilton with three months' severance pay in accordance with its traditional policy and as expressed in its May 30 memorandum to employees (Petition at 17a). Hamilton demanded additional severance pay computed in accordance with the terms set forth in the Handbook.

The District Court concluded that the Handbook's description of Air Jamaica's severance pay policy was an employee welfare benefit plan covered by ERISA (Petition at 21-22a) and that Air Jamaica's reservation of rights was not enforceable against Hamilton's claim for additional severance benefits (Petition at 33a).

On appeal, the Third Circuit Court agreed with the District Court that the Handbook's description of the benefit, not Air Jamaica's longstanding policy and practice, was the ERISA plan (Petition at 5a). However, the Court further concluded that Air Jamaica's explicit reservation of rights was part of that plan and was a limitation upon the benefits described therein. The Court held that ". . . nothing in ERISA prevents Air Jamaica from providing its employees with benefits on a case by case basis — as long as that limitation is

explicitly stated as part of the plan" (Petition at 7a). The Third Circuit Court reversed the District Court's judgment for Hamilton.

REASONS WHY THE PETITION SHOULD BE DENIED

THE THIRD CIRCUIT COURT FULLY CONSIDERED AND CORRECTLY DECIDED THE QUESTIONS PRESENTED IN THE PETITION.

The Third Circuit Court's ruling in this case is a straight forward application of well established legal principles to a participant's claim under ERISA §502(a)(1)(B), 29 U.S.C. §1132(a)(1)(B), for benefits under an employee welfare benefit plan. The Court of Appeals ruled that the severance pay policy articulated in Air Jamaica's Employee Handbook was itself an employee benefit plan for ERISA purposes; the Court considered the pertinent terms and conditions of that plan, and the Court gave effect to that plan as written and disseminated to Air Jamaica's employees. Notwithstanding Hamilton's characterization of the issues as involving a failure to accurately disclose the terms of the plan, Hamilton's dispute is, and always has been, with the substantive content of the plan that Air Jamaica accurately disclosed to him. Hamilton's effort to reform Air Jamaica's severance pay plan to his liking is not a matter appropriate for this Court's review.

The Third Circuit's recognition that ERISA does not govern the substantive content of employee welfare benefit plans followed the controlling decisions of this Court. *Metropolitan Life Insurance Co. v. Massachusetts*, 471 U.S. 724, 732 (1985); *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 91 (1983). The Third Circuit's observation that ERISA does not require any particular set of benefits is similarly consistent with controlling authority. *Shaw v. Delta Airlines, Inc., supra.*, 463 U.S. at 91. The Court's conclusion that ERISA does not provide any authority to a court to write or rewrite the substantive content of welfare benefit plans is in harmony with the

decisions of every circuit court of appeals which has considered the issue. See e.g. *Sutton v. Weirton Steel Division of National Steel Corp.*, 724 F.2d 406, 410 (4th Cir. 1984), cert. den., 467 U.S. 1205 (1984) ("pertinent employment agreements" are exclusive source for plan terms); *Moore v. Reynolds Metals Co. Retirement Program,* 740 F.2d 454, 456, n.4 (6th Cir 1984), cert. den., 469 U.S. 1109 (1985) (courts are not permitted to modify language of a benefit plan); *Young v. Standard Oil (Indiana),* 849 F.2d 1039, 1048 (7th Cir. 1988), cert. den., 488 U.S. 981 (1988); *Blau v. Del Monte Corp.*, 748 F.2d 1348, 1353 (9th Cir. 1984), cert. den., 474 U.S. 865 (1985). Hamilton points to no contrary authority.

Through its notice and disclosure provisions, ERISA requires notice to plan participants of what the benefit plan is; it does not dictate what that plan must be. In ERISA §502(a)(1)(B), 29 U.S.C. §1132(a)(1)(B), Congress provided a civil remedy for participants to recover benefits due "... *under the terms of the Plan* ..." [emphasis supplied]. In ruling that ERISA secures only the benefits provided in the plan, subject to the terms, conditions and limitations that the plan places on those benefits, (Petition at 8a), the Third Circuit tracked the precise language of the statute and was again consistent with the decisions of other circuit courts of appeals which have considered the issue. See e.g. *Hlinka v. Bethlehem Steel Corp.*, 863 F.2d 279, 283-284 (3rd Cir. 1988) (enforcing plan clause requiring employer approval for early retirement); *Sutton, supra.*, 724 F.2d at 410; *Vanderblok v. Provident Life and Accident Insurance Co., Inc.*, 1992 WL 23221, 3 (6th Cir. 1992) (refusal to expand life insurance plan to include payments for general disability); *Davidowitz v. Delta Dental Plan of California, Inc.;* 946 F.2d 1476, 1480-1481 (9th Cir. 1991) (enforcing clause barring assignment of benefits under welfare benefit plan). Hamilton points to no contrary authority.

This Court should once again decline to tamper with the enforcement scheme set forth in ERISA §502(a) and

should decline Hamilton's invitation to expand the §502(a)(1)(B) remedy beyond "the terms of the plan." *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 52-55 (1987); *Massachusetts Mutual Life Ins. Co. v. Russell*, 473 U.S. 134, 147 (1985).

In the Employee Handbook, Air Jamaica advised its employees that its description of the separation pay procedure reflected its then "present intention", and that it reserved the right to make individual severance pay determinations on a case by case basis (Petition at 2-3a). As found by the District Court, "Air Jamaica did everything it could" to so inform its employees "by including a reservation of rights in the Handbook and asking all employees to sign a form indicating that they read and understood the reservation" (Petition at 30a). Hamilton read the reservation, did not like it and registered that dislike by refusing to sign the statement of understanding (Petition at 18a). Nevertheless, whether he liked it or not, Hamilton was on actual notice, from the content of the plan document itself, of the terms on which the severance benefit was offered and the rights Air Jamaica reserved to itself relating to provision of that benefit. There was no failure of disclosure relevant to the outcome of this case; the record simply will not support the questions presented by Hamilton.

Under the explicit terms of the plan, Air Jamaica remained free to alter or eliminate the formula used to calculate severance pay at any time. When Air Jamaica acted to correct the error in its Handbook and provided Hamilton with a severance benefit in accord with its intended and longstanding policy, Air Jamaica acted in accordance with the terms of the plan as those terms were disclosed to employees in the plan document itself. In enforcing the reservation of rights, the Third Circuit gave effect to a clause which was as much a part of the plan as was the plan's description of the severance benefit. "[T]he reservation is part of the written promise and a limitation upon it" (Petition at 8a).

Hamilton's contention that the severance pay plan was inadequate as a summary plan description because it was insufficiently accurate is also inappropriate for this Court's consideration. First, the plan did accurately inform plan participants of their rights under the plan. 29 U.S.C. §1022(a)(1). Hamilton's preference for an absolute benefit with no strings attached is not legally significant. Air Jamaica accurately disclosed the limitations on the benefit described in the plan.

Second, while the questions presented may be appropriate for Congress' consideration, they are not for this Court. Without citation to authority, Hamilton defines "accuracy" as a quality providing "certainty, stability and predictability" and as "insuring precision" (Petition at 8). Under the rubric of "accuracy", Hamilton actually presents the question of whether welfare benefits should vest. However, welfare benefits are not subject to ERISA's vesting requirements. 29 U.S.C. §1051(1); *Massachusetts v. Morash,* 490 U.S. 107, 119 (1989). Welfare benefits "vest" only to the extent provided in the plan. The level of certainty, stability, predictability and precision in a given welfare benefit is a function of the benefit plan itself, not ERISA. *In re White Farm Equipment Co.,* 788 F.2d. 1186, 1193 (6th Cir. 1986).

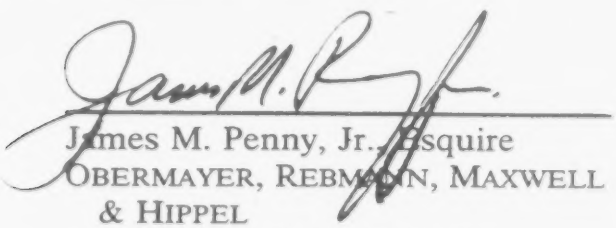
Third, the courts of appeals are uniform in holding that, absent bad faith or detrimental reliance, a summary plan description's failure to accurately set forth the rights and obligations of plan participants does not entitle a participant to a particular benefit. *Govoni v. Bricklayers Local 5 Pension Fund,* 732 F.2d, 250, 252 (1st Cir. 1984); *Adams v. Avondale Industries, Inc.,* 905 F.2d 943, 949 (6th Cir 1990), cert. den., ____ U.S.____ 111 S.Ct. 517 (1990); *Kreutzer v. A.O. Smith Corp.,* 951 F.2d, 739, 743 (7th Cir. 1991); *Blau, supra.,* 748 F.2d at 1353; See generally *McKnight v. Southern Life and Health Ins. Co.,* 758 F.2d 1566 (11th Cir. 1985). Hamilton refers to no contrary authority.

Accordingly, the essential factual predicate for the questions presented by Hamilton is absent. Hamilton's rights under Air Jamaica's severance pay plan were fully and accurately disclosed, and Hamilton was aware of the limitations on the severance benefit from the time the plan was first disclosed to him. In ruling that ERISA does not intrude upon an employer's right to design a welfare benefit plan as it sees fit, the Third Circuit Court's decision is consistent with the decision of every court of appeals that has considered the issue.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,



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